

INDIAN TRUST FUND ACCOUNTS MANAGEMENT

STATES
OVERSIGHT HEARINGS

BEFORE THE
TASK FORCE ON INDIAN TRUST FUND
MANAGEMENT
OF THE
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COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

MANAGEMENT OF INDIAN TRUST FUND ACCOUNTS
RELATING TO ALASKA NATIVES

AUGUST 10, 1996—ANCHORAGE, AK

MANAGEMENT OF INDIAN TRUST FUND ACCOUNTS BY
THE DEPARTMENT OF THE INTERIOR

AUGUST 20, 1996—SCOTTSDALE, AZ

MANAGEMENT AND RECONCILIATION OF INDIAN
TRUST FUND ACCOUNTS

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ALASKA NATIVES TRUST FUND ACCOUNTS

SATURDAY, AUGUST 10, 1996

HOUSE OF REPRESENTATIVES, COMMITTEE ON RESOURCES, TASK FORCE ON INDIAN TRUST FUND MANAGEMENT,

Anchorage, AK.

The task force met, pursuant to call, at 10:00 a.m. in Z.J. Loussac Public Library, Assembly Chambers, 3600 Denali Street, Anchorage, Alaska, Hon. Don Young presiding.

STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

Mr. YOUNG. Good morning. I want to welcome all of you to this hearing being conducted by the Congressional Task Force on Indian Trust Fund Management. A little form of explanation, the chairman of the task force that's actually been appointed by myself is J.D. Hayworth from Arizona, but he could not be here today, so as Chairman of the Full Committee, I am conducting this first hearing in Alaska.

Reports and investigations of the management of Native American trust fund accounts have revealed the history of waste and corruption unprecedented in the Federal Government. Recently, the Arthur Andersen Company reported that, in trying to reconcile 20 years of Native American trust fund management, it could not account for \$2.4 billion in account transactions. That's why I created the task force. I want to know what can be done to straighten the mess out once and for all.

Today we will receive testimony concerning the management of those trust fund accounts which are owned by Alaska Natives. We will focus on the Alaska Native Escrow Fund as well as those Individual Indian Money or IIM accounts, which are owned by individual Alaska Natives.

We have an impressive group of witnesses today. We have Donna Erwin, the director of the Office of Trust Fund Management at the Department of the Interior; Eric Davenport, the chairman of Intertribal Monitoring Association for the Indian Trust Funds; Carl Charles, an Alaska resident with an astounding story to tell; Lonnie Points, an accountant with the Intertribal Monitoring Association for Indian Trust Funds, and Ed Thomas, the president of the Central Tlingit and Haida Business Council; Alma Upicksoun, the assistant house counsel for the Arctic Slope Regional Corporation; Elouise Cobell, the chair of the special trustee's advisory board;

to the bottom of what is, we can all agree, a serious, serious problem and an out-and-out mess.

With that in mind, then, we would like to hear from our witnesses. We will begin with the director of the Office of Trust Fund Management within the Department of Interior, Ms. Donna Erwin.

STATEMENT OF DONNA ERWIN, DIRECTOR, OFFICE OF TRUST FUND MANAGEMENT

Ms. ERWIN. Thank you, Mr. Chairman. I really appreciate the opportunity to present testimony today on the Indian trust funds management. As you're aware, the Office of Trust Fund Management manages approximately \$422 million for 50 different tribes in the Phoenix area and \$83 million for approximately 38,000 individual Indian accounts that are Arizona residents.

You are aware that we have had many, many reports about the past problems that have occurred. When the special trustee was appointed in September of 1995, he began an assessment to look at the policies and the procedures and the systems and how do we correct these and what we need to do to move forward. He included in those the past 20-year tribal agreed-upon procedures reports that you referred to.

We also included the August of 1995 Tiger team report, and that is a group that was put together to look at the IIM systems throughout the Department that's headed by an MMS employee and that is also available in addition to those various GAO reports. We did interviews with tribes, with account holders, and talked to people who were professionals in the trust management field.

And we have since then put together a conceptual strategic plan. And all of these reports were included in that strategic plan. But what all of these, including the special trustee's conceptual report, confirms is that the criteria that's outlined in the 1994 Trust Reform Act cannot be met currently.

There are things that it requires, such as timely and accurate accounting for balances, accurate and timely reports to account holders, and audits under generally accepted audit standards, and further reconciliation efforts that due to the records unavailability are not able to be accomplished at this time.

While significant improvements have been made at OTFM—at this point, we need to clarify, because there's some confusion that we part of OST—the Office of Trust Fund Management and the field staff which are the only units that currently report to the special trustee. Realty leasing is still part of the BIA, even though the special trustee is responsible for monitoring and correcting and doing reforms of the entire trust program.

Some of the things that have been accomplished during the last few years are that we are online directly to the Treasury now, so that we now perform daily reconciliations of cash, monthly reconciliations of assets. We have a system that actually tells us when securities are maturing and when cash is due on any of the investments.

We have a state-of-the-art trust system for the tribal accounts and all investments, and we have made additions to staff and reorganized the OTFM staff, to better enable us to perform the fiduciary duties. We have eliminated overdrafts in all the tribal ac-

counts from 1993 forward, there are no recurring overdrafts. We have reduced in half the number of overdrafts in the IIM accounts.

We have also been out this year doing five consultation meetings with IIM account holders to hear what their problems are. We have looked geographically where these people are located, and how dispersed they are and how can we better serve these people. We are also preparing work plans and target dates for the IIM data clean-up.

You've received the special trustee's strategic plan, and there's nine initiatives within this designed to rectify problems and bring the trust accounts up to commercial standards. And these are important enough that I would like to read those directly.

One is a trust resource asset management delivery system. This will involve obtaining new trust resource asset management and delivery systems for asset leasing, contracting, lending, buying, and selling, together with standardized and/or integrated asset management. The system must be able to tie to and track from the land-ownership records.

Number two is an accounts receivable data and billing system that uses lease contract and landownership information. Number three is a trust depository for payments and delivery system for individual Indian money, the IIM account system I've referred to. This will entail purchasing a trust depository, payments, and other financial services and accounting and statement system.

Number four is a land records and title recordation and certification system. Number five is a general ledger and general accounting system. And number six is a technology service center, a data center, that's dedicated to the trust resources and trust funds management.

Number seven is a national archives and records center. And this will involve obtaining and centralizing a modern, national archives and records center for trust resource, asset, and funds records storage and retrieval. Number eight is a risk management control system, an internal audit program.

Number nine is an independent institutional structure. And this will involve consolidating all the trust resource trust funds and landownership and records management into a single, independent institutional unit.

As stated above, the conceptual strategic plan is completed, and we have done the conceptual. Now what we need to do is go into a user's need assessment, know what the users need, what's out there, and that's the requirement analysis. In the 1997 President's budget, we requested a million dollars for that.

This requires an outside contractor. And the reason for that is that the staff in current staffing at OTFM is for the day-to-day operations, not for the cleanup, not for the evaluations. So everyone that's there is to be able to proceed on a day-to-day basis and continue the current operations.

It's going to take about 90 to 120 days to complete the requirements analysis and the user's need assessment once funding is received. There are many things, though, that can be done in the meantime.

For instance, the IIM system, the IIM accounting system that we referred to, that is a project that can be accomplished during the

user's need assessment and the requirements analysis, and it can be interfaced into the overall conceptual plan and the overall conceptual systems.

The 1997 President's budget request is for \$36.3 million, which is a \$20 million increase over the 1996 budget. And this is to be used for correcting IIM systems—again, it's a very crucial process. I would like to divert for a second, because one of the things the committee had asked about was how could a tribe take over the management of their money, the management of their IIM accounts. And you inquired as to how can that be accomplished.

One of the things is that Title III of the Trust Reform Act allows the tribes to remove their judgment funds money. And at that point, the government would have no further liability. They can take this money out to private institutions to be managed. There are regulations that are being published currently that outline the steps to be able to accomplish that.

There's another, self-governance. They can remove funds under self-governance, and that means they would take over the programs that the Office of Trust Fund Management or the Bureau is performing, but that the liability still would reside with the Secretary, which means that we would still need to be the monitoring and the auditing side and would be provided by the government.

Individuals, if they are a supervised account, cannot remove their money right now. The supervised account means one of two things: it's either a minor that has not reached age of majority, or it's non compos mentis. Anyone else that has an account—as we're going out in the consultation meetings, we're saying, "If you have an account, if you do not reside in one of those two categories, then you need to be asking why." That money should be released to the individual.

As we said, the IIM consultations have been going on. We feel like they have been very successful. We have got some very good input from the individuals around the country. One of those was held recently here in Phoenix.

But in closing, the one thing that I want everyone to understand is, the past is going to continue to be a challenge, not only to the administration, but to Congress, and to the account holders.

But the enactment of the President's 1997 budget request would represent a substantial step to ensure that Indian trust reform efforts are a top priority and implemented in a manner that will ensure that the fiduciary responsibilities of the Federal Government are met as they should be. This concludes my statement. I'll be happy to answer any questions you might have.

[The prepared statement of Ms. Erwin may be found at end of hearing.]

Mr. HAYWORTH. Director Erwin, we thank you for your statement. And we appreciate the efforts you have made to try and bring some order to the situation we now find.

Just a little background, first of all, on the individual accounts. Geographically, are we talking coast-to-coast and beyond? Or if there was a way to break this down geographically, where can the preponderance of these accounts be found? Is it here in the Southwest, or is it just completely coast-to-coast?

Ms. ERWIN. As we pointed out in some of the original meetings, we became a very mobile society. So historically, they have been serviced out of agency and area offices. But through the mobility, everyone generation to generation, they're now found coast-to-coast, from Hawaii. When we do maps they're very informative to find out where the people are located and where they're actually serviced.

Mr. HAYWORTH. When will these regulations that you mentioned, allowing tribes to take over their own accounts, be put into effect?

Ms. ERWIN. These regulations have been published for comment, and we have already had a comment period. And they will be published very shortly. But we have not restricted any tribe from removing funds. They're allowed to remove their money at any time, even though these are still proposed regulations.

Mr. HAYWORTH. So right now, if a tribe wanted to go ahead and take its funds, it would be free to do so?

Ms. ERWIN. Right. Several things should be brought up with this, one, there's several requirements in the regulations, it states that the tribe understands that it's not only removing funds but also the government liability and we require this be done by resolution.

Their constitution has to allow the governing body to remove the funds, that there's no further liability on the government's part. They need to acknowledge that. We need to see that they have signed agreements with their fund managers and that they will continue to utilize the funds in the manner they were appropriated.

Mr. HAYWORTH. You mentioned some different costs, projections; for example, I believe bringing in an outside contractor here initially over 90 to 120 days at a cost of \$1 million. Subsequently, the Administration is asking for in the next fiscal year a \$20 million increase to \$36.3 million to begin a process of trying to bring order to the situation we find now.

Let me see if we can break this down a little more specifically, Director Erwin. How much will it cost overall to first of all set up an asset management system?

Ms. ERWIN. The asset management system is not part of the 1997 budget request—it's only the IIM system module, unfortunately. The strategic plan that I referred to—and Mr. Homan's conceptual plan—has the breakdown of the conversion and the actual system costs—what is also involved here is bringing telecommunications equipment up to date, bringing all of the communications and equipment that have over the years not been properly funded up to the standards.

You cannot bring the best bankers in the world in to run current systems and operate the office efficiently the way it should be operated. So it takes a lot to bring everything up to date so they can support these systems.

Mr. HAYWORTH. With that in mind, do you know a figure, or has there been a breakdown for this?

Ms. ERWIN. There is a breakdown. I would be glad to supply that to you. I do not have it with me today. But when we went to the Appropriations Committee, we said, "This is how we will start that process. This is how we will use that additional \$20 million, which includes some of the systems that can be put in place immediately."

It's a stopgap so that immediate improvements can happen and reforms that would reduce any continuing liability. And then with the study completed in March or April of next year, we will be able then to give exact projections for how we will implement, target dates and how much money we will need in the future.

Mr. HAYWORTH. So really, in terms of specific numbers, whether for an asset management system, the accounts receivable system, the land records system, the general accounting system, the audit system, and all the other things that would be involved in this, specific figures have been formulated, and they right now reside with the appropriations request?

Ms. ERWIN. Correct.

Mr. HAYWORTH. And what we would very much appreciate, if you don't have them here with you today, is that this task force receive those specific sums and amounts in writing. And I believe the customary period just to make sure we get this done, taking into account travel back to Albuquerque and so forth, if we could make sure that information is to the task force within five business days, that would be greatly appreciated.

Let me return to a broader philosophical question. And I understand the challenges you face here in the Office of Trust Fund Management. You mentioned the fact that an outside contractor should be brought in at a cost of \$1 million over a certain period of time to begin the study. Indeed, the government turned to Arthur Andersen to audit the current—and to check on the current problems we now have.

Going to outside sources, it seems to beg the question, could this job be done more effectively in contracting out to private entities, still mindful of the Federal Government's Constitutional role to the first Americans; would it be more cost effective and more practical to follow the procedures that seem to be indicated at least partly here, reflexively, going to an outside contractor, using Arthur Andersen and others, would it be wise, frugal, and a good stewardship of the taxpayers' money to search for outside contractors to take on this very significant role?

Ms. ERWIN. I think that will be considered in the overall conceptual plan, what can be privatized and what should not be privatized. One thing you need to remember, and I have more years than I want to talk about, 29 years of private trust sector experience. You're creating somewhat of a liability for that entity you transfer accounts to, because you do not have accurate account balances.

You have 300,000 individual accounts right now that need to be reduced. There's some very small amounts, and that needs to be resolved. That's one of the questions we have been asking at the IIM consultation meetings, "What do we do with these small amounts?" And there's a myriad of suggestions. But people do not want checks for two or three cents. They don't get cashed.

And in 12 months, they get posted right back to that account again. And so we have to resolve some of these problems. There are some overdrafts. There are 50,000 lost account holders that we do not have their address right now. They have moved. Maybe the grandmother had the account, grandchildren never knew that she

had an account, and she passed away, so no one knows that this account is even existing.

And we have some large overdrafts in house accounts. So we need that data cleanup and the requirements analysis badly to be able to resolve some of these problems.

Mr. HAYWORTH. In terms of overdrafts, is it possible that a tribe could owe the BIA funds? And if so, how might this happen?

Ms. ERWIN. Yes, it is possible. There could be incorrect postings. And I believe when you talk about the \$2.4 billion, it should be brought up that those are not missing funds. \$1.1 billion of those are receipts that are residing in the tribes' accounts currently. There was just not the proper audit to make sure they were in the proper accounts, or how did they get into the accounts.

But they are in the tribal accounts. They are being invested. There's about \$500 million of that that's transfers from one tribal account into another, same tribe within the tribe's checking or savings type accounts. So that's about half a billion there. And then there's about \$800 million in disbursements. And those are the ones that are of a large concern, obviously.

Mr. HAYWORTH. We have been talking about the \$2.4 billion and whatever allocation of whatever problems. There have been those who have come to see us, however, who maintain that this is simply the tip of the iceberg, that there may be more significant problems and a far greater sum. What do you think of those assessments?

Ms. ERWIN. That is possible. The problem with that is, due to the funding timeframes, all of that was done during the past reconciliations for lease that was returned to fill-the-gap, was we know the money was received. Does it correspond with the lease? That was not accomplished. As has been pointed out in testimony, there is not an accounts receivable—a comprehensive accounts receivable system for money that's due for those leases across the country.

Mr. HAYWORTH. Thank you.

Let me turn to my colleague from American Samoa.

Mr. FALLOMAVAEGA. Thank you.

Thank you, Ms. Erwin. We had the task force hearing in Alaska. And one of the concerns that the tribes had indicated at that hearing was the office did not notify them that the interest collected and the funding that was to be returned are taxable. Do you think that the tribes deserve that they should have this interest taxed?

I mean, do you think maybe the Federal Government could at least give them that courtesy, they don't have to pay taxes for this interest? After all, it wasn't their fault that they got into this mess.

Mr. ERWIN. I think that's an IRS question. IRS—there are regulations. They (IRS) recently this year published a new booklet on the taxation of Indian moneys. And the funds you are referring to in Alaska was called "IMPL," Indian moneys proceeds of labor funds. And this was back in 1985.

The Bureau has formulated in the regulations as to how that's disbursed. We have since the Alaska hearing been investigating each of the areas, asking them, "Please tell by survey, 'Did you submit 1099s on this or not?'" And that's the question we are currently in the courts with the IRS on.

We do issue 1099s. On the customer statements, we list this money, "Here is your taxable income for this year. This will be reported to IRS." That was a past practice of an escrow account.

Mr. FALEOMAVAEGA. The point here is that you do notify the tribes properly as to what portion of the money that's being returned that is taxable, or the interest?

Ms. ERWIN. Yes, and that was the individual accounts that we were referring to.

Mr. FALEOMAVAEGA. Is there any provision under the current law of the 1994 law that was passed concerning the establishment of the Office of Trust Fund Management—are there any provisions of the law that you think that ought to be amended or changed to improvement it, not only the functions of your office, but just a better way to streamline the operations, besides the funding that is being requested, of course?

Ms. ERWIN. I think that's one of the things we're also going to look into in the requirement analysis. We are constantly streamlining, constantly finding, as we automate, more systems, better ways, more efficient ways. We're looking at the lock box situation. One of our problems is that we have been sending monthly statements and we're getting a lot of complaints about sending statements on small amounts.

Under the current Trust Reform Act, we're required to send quarterly statements to all of the IIM account holders. And they're saying, "For four or five cents, until we resolve this, can you send this only annually?" So that will be something we will be suggesting as a change to the Reform Act.

Mr. FALEOMAVAEGA. It's my understanding that as of this time, approximately 86 percent of the accounts are somewhat being—that you've been able to accomplish the task up to 86 percent that you've been able to account for? Am I correct in my background reading of this?

Ms. ERWIN. That's the past reconciliation. Those agreed upon procedure reports that Arthur Andersen presented, yes, that is a correct figure. And there was those amounts that could not be reconciled. You could not find proper documentation. And that is the \$2.4 billion that we keep hearing about. We did not find all the proper documentation to support all of those transactions.

Mr. FALEOMAVAEGA. So the 86 percent that is now being able to be accountable, that's the \$2.4 billion that we're talking about, or is that more or less—

Ms. ERWIN. Yes. The \$2.4 is the 15 or 14 percent difference that could not be audited in the reconciliation. And that's only tribal accounts. Bear in mind, that's only tribal accounts and only for a 20-year period.

Mr. FALEOMAVAEGA. The Chairman had indicated earlier about the fact that it's good that we also privatize or allow the private sector to do the accounting. My understanding from the fact that when we assigned Arthur Andersen to do the accounting, they couldn't do any accounting, because the records are so messed up. And here, we ended up paying them for doing this.

Now, couldn't the office perhaps just say, "There's no sense hiring somebody in the private sector, pay them a million dollars just

to tell us what we already know"? The fact is, how can they possibly do any accounting, when there are no records to do it with?

Ms. ERWIN. What we're looking for now is the requirements analysis and user input to be able to go forward in developing the proper systems, not to do the accounting for the past reconciliation. You're correct. There was a massive number of records that were missing. And as you noticed in the reform plan, one of the things that was outlined in one of the items in the initiatives, is a national archives, an Indian national archives center, so all trust records are centralized, and you know where they are.

Mr. FALEOMAVAEGA. Is there anything that you feel that is most critical at this point in time that the Committee should absolutely address by way of anything in the statutes or any way by way of regulations that we ought to pursue with due diligence to make sure that you've got all the tools, that you have every means available at your disposal to make sure that you don't get obstructionists and anybody else that will be as a barrier to prevent you from doing your job?

Ms. ERWIN. I think the appropriations for 1997 will be a big help on starting us on the right track and moving forward.

Mr. FALEOMAVAEGA. And do you feel that the responses from the Indian tribes and your consultations have been positive?

Ms. ERWIN. Yes, they have been very positive. I mean, there's past problems, I agree, but they have been very informative, and we have been very pleased with the results of how we should move forward. And they have suggested things including different hours as in banking hours, Saturday meetings. And so it has been very enlightening for us.

Mr. FALEOMAVAEGA. And I would like to invite you, Director Erwin, please do feel free also to ask any of the members of the Committee, also, that we would love to work with you closely to make sure that we pursue this at all costs. And thank you for being here, and thank the Chairman for this hearing.

Mr. HAYWORTH. I thank my colleague from American Samoa. I also thank you, Director Erwin, for your testimony. One final question, or perhaps it's really more of an observation.

Even as you petition for increased funding here—and I realize this is not your role with the Secretary of Interior, and perhaps it's something I can better convey to him face-to-face—one of the concerns that I have as a Member of Congress is that historically, putting the Department of Interior, for lack of a better term, in charge of the affairs of living, breathing human beings who are citizens not only of their respective sovereign nations but also citizens of the United States, causes me great concern, to the extent that while we all want to preserve our natural resources, as I have expressed and as I have heard often, should we not hold human beings in greater esteem and the needs and the concerns and the problems they face?

Should we not hold human beings in higher esteem than rocks and trees and critters? I mean, we all want to preserve our ecology. We all want to preserve our environment. But one thing that I will address personally with the Secretary in planning for the budget of the overall Interior Department, I would trust that he would be

a good steward of those funds and place more funding into these different endeavors.

Rather than asking to generate new funds and additional funds, I would hope that he would take a look—and I would trust that in the reports that you are making to him, even recognizing that it is not your role to define policy, that certain points would be made that perhaps with the billions of dollars already allocated to the Department of Interior, more precedence could be given to the needs of humans and the very real crisis we face here.

And with that in mind, again, I thank you very much for your testimony, Director Erwin, and appreciate the fact that we'll be working together in the coming days to try and reconcile this problem. Thank you, ma'am, very much.

Ms. ERWIN. Thank you. We appreciate all your efforts.

Mr. HAYWORTH. Thank you.

Our next panel, we would like to welcome. In fact, we'll receive a welcome from one of the panelists, given the protocol that goes on.

Ivan Makil, who is president of the Salt River Pima Indian community; Ronnie Lupe, chairman of the White Mountain Apache Tribal Council; and our friend, Albert Hale, president of the Navajo Nation, are here. And gentlemen, we would ask you to come front and center now. And we would appreciate hearing from all of you.

It's so good to see my friends and constituents here today to testify. And in the sporting vernacular, Ivan, we often talk about the home field advantage. With that in mind, since you've been so gracious as to open these facilities to us for this hearing, I would ask you to begin our time together on this panel.

STATEMENT OF IVAN MAKIL, PRESIDENT, SALT RIVER INDIAN TRIBE

Mr. MAKIL. Thank you, Congressman. First of all, welcome back to Arizona. You've been here for a few days or weeks, I guess, enjoying the nice weather. And we're especially pleased to have you here in Salt River, where a lot of people don't realize it, but it is 10 degrees cooler than in the city, believe me.

Mr. HAYWORTH. Absolutely.

Mr. MAKIL. Although sometimes, it's warmer than in the city.

Mr. HAYWORTH. Well, we always appreciate the warm welcome, Mr. President.

Mr. MAKIL. And we're also glad that you chose to have the hearing here today. We're glad that we can provide the facility to have it here. And Mr. Faleomavaega—I'll try to get that right—it really is a pleasure to have you here and also to have the opportunity to personally thank you for the work that you've done in support of our issues across the nation.

Tribes have been in need of it for some time, not people that just understand our issues. And for both of you to be here, both of you gentlemen here actively advocating on our behalf, I thank you for that, because that is something that hasn't been in the past.

And therefore, issues such as we're about to deal with today can occur and will continue to occur without people like yourselves advocating on our behalf.

So without taking a whole lot more time, I just wanted to thank you and welcome all of you here, as well as the distinguished other panel members here, Mr. Lupe, Mr. Hale, and all the other tribal leaders that are here and guests. And so we thank you all for coming here today, and we hope you will be enlightened even more so than I know you already are by a lot of the information that will be presented to you. And without anything further, I'll get right to the testimony.

I would like to submit for the record a formal written testimony to the task force. And I will just try to abbreviate those comments and summarize them. And I would like to really get to some issues that I think are of major concern to everyone here. And those are some thoughts about some resolutions to this issue.

It has been several years now since legislation was passed—at least I know the six years that I've been involved in this issue—that this problem has been worked on. And there was a plan developed after the results were looked at, or a plan developed to look at this whole issue. Results were turned out by Arthur Andersen. And it was an atrocity.

The results only confirmed what the tribal people always believed. And we had to go through a very costly process of proving what we already knew. And that's unfortunate. It's unfortunate, because those are a significant amount of dollars that could have been used and been helpful in a lot of other areas.

But nonetheless, what the results produced was an opportunity for a special trustee to have and develop a plan. Now, he was given one year—Mr. Horn was given a year to come up with the plan. And within about nine months, he came up with a plan. And I was particularly impressed with the plan he developed. And I was really impressed with his commitment to the whole issue once he understood the issue.

This strategic plan or conceptual strategic plan that he developed is a plan that is a start to beginning to understand some of what needs to be resolved in this issue. This plan, if initiated, will, I believe, begin to bring about not only solutions within the Department of Interior itself that need to be corrected, but also in terms of resolutions with tribes, which is—you know, if you think about the \$2.4 billion that we keep talking about—and as you've already stated several times, it's only the tip of the iceberg.

We don't know what really is out there with those other 300,000 other issues that are hanging out there. We don't know what the cost of those might be. When this plan was developed, it was going to cost about \$2 million to implement.

And many of us that were—let me back up a little bit. I was asked to serve on an advisory board to the special trustee. And as tribal leaders, many of us really felt comfortable with the creation of this advisory board, because it allowed for tribal input.

It allowed the voice of our people to be involved in this process, to have the ear of the special trustee, so that the issues or the solutions that could be developed would be real solutions, not what has happened in the past, where an agency develops a solution without good input from tribes. It is very important, and I think it's key in the resolution of this issue, because the potential liability that

telling that to the Hoopa people. There's a conflict of interest, a strong conflict of interest there.

Mr. HAYWORTH. On that very compelling note, I want to thank you all for your testimony and answering questions. I indeed want to thank all of those who joined us today, especially the ever-inrepid, ever capable staff that made the venture forth from the swampland that does surround Washington, DC.

I really appreciate the efforts of everyone here today. This obviously raises more questions for us, but I think what is especially helpful in addition is the effort by many to offer some solutions and a framework. And while admittedly, our interaction here on this planet in every human endeavor is imperfect, to say the least, there may be corrective actions that we can take and certainly should take to bring about some sort of satisfactory resolution of the problems we confront.

So with that, I thank you witnesses. I thank also my colleague from American Samoa, who unfortunately had to leave a bit early to catch that plane toward the 50th State and another conference. And with that, this session of the task force stands adjourned. Thank you very much.

[Whereupon, the task force was adjourned; and the following was submitted for the record:]

United States House of Representatives
Committee on Resources
Task Force on Indian Trust Fund Management
Hearing on Indian Trust Funds Management

Testimony of Donna Erwin
Director, Office of Trust Funds Management
Phoenix, Arizona
August 20, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. As you are aware the Office of Trust Funds Management manages APPROXIMATELY \$422 million for 50 tribes in the Phoenix Area and \$83 million for 37,800 Individual Arizona residents. The hearings are focusing on trust management practices and what it may take to ensure sound trust management in the future. Each of these focal points is discussed in turn.

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which has been provided to Congress.

In December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies

(IIM) accounts and issued a report entitled "IIM Related Systems Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.
3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.

This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land and ownership information.

This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts.

This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.

4. A land records and title recordation and certification system.

This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.

This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.

This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.

This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.

This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.

This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. The next steps are conducting a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's budget request includes \$1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is \$36.3 million, a \$20 million increase over the 1996 conference level of \$16.3 million. The request includes \$13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The \$20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

In closing, I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process in December, 1995 represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met.

This concludes my statement. I will be happy to answer any questions you may have.

port this past week in urging House appropriations committee leaders to concur with the Senate appropriation mark of \$36.3 million. That is the administration's request and that is the kind of bipartisan cooperative work that we need to get this job done and fix the system. So thank you very much.

Mr. HAYWORTH. Thank you, sir. And mindful of that fact, I would just let you know that we are working very hard, Chairman Young, Chairman of the Full Committee, working in a bipartisan fashion to accommodate that request and to move forward with that. And with that, I thank you very much for your time, sir, and would like to thank those in attendance this morning, the staff members of both sides of the aisle for their help throughout the course of these hearings. And with that, the Task Force hearing stands adjourned.

[Whereupon, at 11:49 a.m., the Task Force was adjourned; and the following was submitted for the record.]

PREPARED STATEMENT OF PAUL M. HOMAN

United States House of Representatives
Committee on Resources
Task Force on Indian Trust Fund Management
Hearing on Indian Trust Funds Management

Testimony of Paul M. Homan
Special Trustee for American Indians
September 26, 1996

Thank you for the opportunity to present testimony on Indian Trust Funds Management. The hearings are focusing on legislative solutions to trust management problems.

Special Trustee's Assessment and Strategic Plan and What It May Take to Ensure Sound Trust Management in the Future

In October 1995, the Office of the Special Trustee for American Indians (OST) commenced an assessment of the U. S. Government's trust management policies, procedures, practices and systems as they apply to individual American Indian and American Indian tribal accounts. By February 1996, the OST completed the preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U. S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary's trust responsibilities can be accomplished. The Assessment and Phase I of the Strategic Plan are included in a document entitled "Special Trustee for American Indians, Assessment and Strategic Plan Principles, Phase I, February 1996" which was previously provided to the Committee.

The principles are conceptual in nature. The Special Trustee will continue to receive input from ITMA, the Advisory Board, affected bureaus within the Department, Departmental staff offices, tribes and tribal members, and the Office of Management and Budget as the conceptual plan is transformed into a detailed strategic plan as required under the American Indian Trust Fund Management Reform Act.

In December 1995, the U. S. Department of the Interior's Bureau of Indian Affairs substantially completed a multi-year "Tribal Trust Funds Reconciliation Project" (Reconciliation Project) and issued an "Agreed-Upon Procedures and Findings Report" for the period July 1, 1972 through September 30, 1992. Its major findings are substantially incorporated in the Special Trustee's Assessment.

In August 1995, the U. S. Department of the Interior substantially completed a study of the trust management systems relating to Individual Indian Monies (IIM) accounts and issued a report entitled "IIM Related Systems Improvement Project Report." The findings of this report are also substantially incorporated in the Special Trustee's Assessment.

The Special Trustee's Assessment, the Reconciliation Project reports, the IIM Related System Improvement Project Report and earlier and later reports issued by the General Accounting Office all confirm that the U. S. Government's trust management systems, policies, procedures and practices coupled with the condition of the trust records and, notably, large numbers of missing documents, are inadequate to allow for:

1. a proper, accurate and timely accounting for trust account balances, collections, disbursements and investments and the maximization of the return on investments.
2. the preparation of accurate and timely reports to trust account holders regarding all collections, disbursements, investments and return on investments.
3. an audit under generally accepted auditing standards.
4. any further reconciliation efforts, since the costs of such efforts would likely substantially exceed the benefits and at the same time would probably yield unsatisfactory and inconclusive results.

While significant improvements have been made over the last several years, the inadequacies of the trust management systems, the condition of the historical records and the U. S. Government's inability to provide an accurate and timely accounting cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's

strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, automating, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system. This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie to and track from land and ownership records.
2. An accounts receivable data and billing system that uses lease-contract and land and ownership information. This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.
3. A trust, depository, payments and delivery system for Individual Indian Money (IIM) accounts. This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and Tribes.
4. A land records and title recordation and certification system. This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.
5. A general ledger and general accounting system. This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.
6. A technology services center dedicated to trust resource and funds management. This will involve obtaining a centralized technology services center dedicated to trust resources, trust funds and land ownership and records management processes.
7. A national archives and records center. This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.
8. A risk management and control system. This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure. This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere.

The conceptual work on the strategic plan is completed. An independent contractor was hired for the purpose of determining approximate costs associated with the development of the comprehensive systems overhaul just mentioned. Out of an abundance of caution, however, a requirements analysis, user needs survey and inventory must be completed before cost estimates can be completely validated and the comprehensive strategic plan completed.

The next step is therefore a requirements analysis, user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The 1997 President's Budget request includes \$1 million to conduct the analyses.

Once the analyses are completed (expected to take 90 days from funding date) and once the staff of the OST is hired, the remaining elements necessary to produce the comprehensive strategic plan required by the Reform Act of 1994 can be completed within 90 days or by March 31, 1997, if the President's budget request for FY 1997 is approved.

The total FY 1997 request for OST is \$36.3 million, a \$20 million increase over the 1996 enacted level of \$16.3 million. The request includes \$13.6 million to begin implementation of the strategic plan. The funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue. The 1997 budget requests no-year funding to allow adjustments resulting from re-estimates or delays in plan implementation. However, it should be noted that if funding for the strategic plan is delayed, the reform effort will be delayed.

The \$20 million requested increase in OST's budget for FY 1997 also reflects the high priority the Administration and the Secretary place on Indian

Trust Asset Reform efforts. Improvement efforts are critically needed to ensure the Federal Government meets its fiduciary obligations to Indian Tribes and individual American Indians. While the Federal Government's trust responsibility is unique, systems, policies, practices and procedures of commercial trust operations can be applied to ensure that the Federal Government better fulfills its fiduciary obligations. Beginning in 1997, the evolution of trust system reforms will be at a point where increased resources can be prudently expended.

I would like to emphasize that "resolving the past" presents a difficult challenge to the Administration, the Congress, and individual Indians and tribes. The ending of the tribal reconciliation process represents only the beginning of an effort to resolve problems with the U.S. Government's past trust fund management practices. The problems in trust fund management have long been recognized by GAO, the Department's Inspector General, OMB, and others in Congress. This Administration is committed to solving these longstanding problems and has made significant progress in strengthening trust funds operations, in conducting a massive reconciliation effort and in taking the steps necessary to ensure the highest level of fiduciary and investment standards are in place in the management of these funds. Future reforms will continue in earnest under the comprehensive strategic plan required by the American Indian Trust Fund Management Reform Act, provided that adequate resources are appropriated by Congress.

Enactment of the President's 1997 Budget request would represent a substantial step to ensuring that Indian trust reform efforts are implemented in a manner that ensures the fiduciary responsibilities of the Federal government are met.

Questions of the Committee

Development of the comprehensive strategic plan is scheduled for completion by March 31, 1997. It will address many of the issues and questions raised by the Committee at this hearing. The following answers are the Department's initial response to the Committee's questions. Further research,

analysis and consultation with American Indians and the Congress will be required over the coming months to arrive at sound legislative solutions to the longstanding trust management problems. It is anticipated however, that in some cases that legislation will not be necessary. Rather, establishment and enforcement of consistent policies, practices, and procedures could solve some of the problems.

The Department of the Interior looks forward to working with the Committee in this regard.

(1) Should the Federal government continue to be in the business of administering IIM accounts?

The American Indian Trust Fund Management Reform Act of 1994 added the following new subsection to 52 Stat. 1037, Chapter 648; 25 U.S.C. 162a:

(d) The Secretary's proper discharge of the trust responsibilities of the United States shall include (but are not limited to) the following:

- (1) Providing adequate systems for accounting for and reporting trust fund balances.
- (2) Providing adequate controls over receipts and disbursements.
- (3) Providing periodic, timely reconciliations to assure the adequacy of accounts.
- (4) Determining accurate cash balances.
- (5) Preparing and supplying each account holder with--

(A) periodic statements of the account performance of the account holder; and

(B) a balance of the account of such account holder, which shall be available on a daily basis.

(6) Establishing consistent, written policies and procedures for trust fund management and accounting.

(7) Providing adequate staffing, supervision, and training for trust fund management and accounting.

(8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

All of these requirements have a direct bearing on the administration of IIM accounts. As long as the Federal government continues to have trust responsibility to IIM account holders, it will have to ensure, directly or indirectly, that the trust responsibilities, including those listed, are met. Under self-governance principles, it is conceivable that at some time in the future most of the trust management functions presently being administered, managed and delivered by the Department or the Bureau of Indian Affairs could be delivered and managed by the Tribes or by other third parties, provided the trustee retains sufficient direct and indirect authority and oversight capacity to ensure that the trust responsibilities to account beneficiaries are being met.

(2) Would you support having DOI contract out the operational functions of managing Indian trust fund accounts to either (a) a private trust management company, or (b) another department of the Federal government such as the Department of the Treasury, so long as the United States retains its related trust responsibility?

All of these options might be alternatives worth pursuing. However,

extensive research and analysis will be necessary before the Department will be in a position to propose these or similar options to the American Indians through the consultation process and to the Congress for consideration. The feasibility of such options will also be in doubt, if the government is unable to state with some degree of certainty the correctness of the account balances transferred.

(3) Would you support DOI charging administrative fees to trust fund account holders to defray the cost of improving its trust fund management systems?

Administrative fees might be charged trust account holders to defray the cost of operating trust management systems, providing such do not exceed private sector fees for comparable trust services and provided appropriate consideration is given to certain account holders who may not be able to afford such fees. Whether charges for systems improvements are appropriate is less certain. The Department is researching the issue of whether fees should be charged tribal and IIM account holders with large balances or activity, dormant accounts, minor accounts, accounts with no known address or an incorrect address and the like. Further research and analysis will be necessary before a proposal can be produced for presentation to the American Indians through the consultation process and to Congress for consideration.

(4) Would you support legislation which would disburse all funds in existing accounts to appropriate account owners, would then terminate those IIM accounts, and would provide that in the future, whenever possible, revenues will be forwarded directly to account holders by check without going through a trust fund account?

There are three critical parts to the trust management process: trust resource management, trust funds investment and management, and land and ownership records management. None are mutually exclusive as all are integral parts of the trust management process. Terminating IIM accounts along the

lines indicated by the question would still leave the Federal trustee with legal trust responsibilities, but the trustee would have an incomplete ability to carry out its responsibilities to determine whether the amounts being collected on behalf of the beneficiary were consistent with the terms of the lease or contract or to determine whether income to the beneficiary was being maximized. In addition, the trustee might not be able to determine whether direct payments were going to the correct account holder.

Certainly, there will be accounts for which this approach would be entirely appropriate and consistent with the Federal trust responsibility. Decisions about the proper management of individual accounts or categories of accounts should be flexible and open to negotiation. The options provided to tribes remove their trust funds from federal management might serve as a model for IIM account holders. Given these constraints and conditions, more research and analysis is necessary for the Department to consider an appropriate proposal.

Just as important, there are approximately 48,219 accounts with balances of about \$201.3 million which are held for minors and other account holders requiring assistance in managing their affairs. Another 5,183 accounts with balances of \$80.9 million are controlled for various reasons as determined by BIA personnel. These accounts could not be closed and paid out unless substitute trustees and guardians could be arranged.

(5) What do you think should be done about (a) fractionated heirship problems and (b) the thousands of inactive accounts which have no beneficiary? (Inactive account funds could be transferred to the Federal government or to the Tribe of the last known beneficiary or to some form of Federal or Tribal escrow account held for some designated use.)

There is no question that a complete resolution of the trust management problems will not be possible unless the fractionated heirship problems are addressed. Toward that end the Department has under consideration a draft proposal for legislation to resolve the fractionated heirship issues which has

as its principal purposes:

(A) The consolidation of existing fractional interests.

(B) The prevention or substantial reduction of further fractionation.

The proposed legislation will be forwarded to the Congress as soon as it is finalized.

Inactive account balances (dormant accounts) and accounts without an address or with an incorrect address have been segregated by the Office of Trust Funds Management. At the present time a clean-up effort is underway to reduce the number of the larger accounts in these categories to the extent practical. The clean-up effort will extend into FY 1997. At the conclusion of this effort, a permanent solution to these troublesome accounts will have to be found consistent with prudential and efficient trust fund management policies and practices and Constitutional taking considerations. The Department will work with the Congress in pursuing these objectives.

(6) Assuming that tribal accounts can not be reconciled any further, what settlement process do you support which would fairly compensate the tribes and would terminate any liability which the Federal government might have for any breach of trust responsibility which might have taken place regarding the management of tribal accounts in the past?

Subsection 3 of Section 304 of the American Indian Trust Fund Management Reform Act of 1994 requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." The Secretary of the Interior has advised the Senate Committee on Indian Affairs and the House Committee on Resources that he will provide a final report on the account holders'

attestations by November 15, 1996. The Department is awaiting those attestations from the tribes, and will address this issue in its report to Congress. Following a series of regional and individual meetings with account holders this spring and summer, the Department on August 26, 1996, sent a letter to each tribal account holder with an enclosed attestation form. The Department requested that the forms be completed and returned by September 27, 1996. The information provided will serve as a basis for the November 15, 1996, report to the Congress on the efforts the Secretary will undertake to resolve any disputes as required by Section 304 of the Reform Act.

(7) Assuming the IIM accounts can not be fully reconciled, what settlement process do you support which would fairly compensate account holders and would terminate any liability which the Federal government might have incurred for any breach of trust responsibility which might have taken place regarding the management of IIM accounts in the past?

On June 10, 1996, a class action lawsuit captioned Elouise Pepion Cobell et al. v. Bruce Babbitt et al. was filed on behalf of all IIM account holders. Counsel for plaintiffs and the United States have been engaged in comprehensive discussions about a process to settle that litigation. As that litigation is currently pending, it would be inappropriate to discuss potential settlement options.

(8) What changes in existing law would facilitate the administration of tribal trust fund accounts?

(10) What changes in existing law relating to the management of Indian trust fund accounts, other than those mentioned above, would you suggest be considered by Congress?

Any major reform of the trust management systems, including many of the

improvements under review by the Committee, will require changes in existing law. The initiatives outlined in the Special Trustee's conceptual strategic plan will require some changes to existing law as well. The final comprehensive strategic plan and other Department initiatives will likely contain even more suggestions for change in existing law to accommodate improved trust management initiatives. At this time, however, it is premature for the Department to be proposing specific changes to existing law for consideration by Congress. With respect to IIM accounts, the Department supports changes to existing law to resolve fractionated heirship problems. For further discussion, please see the answer to Question # 5 above.

(9) What is your opinion of the proposed Phase I of the Special Trustee's strategic plan issued in February of 1996?

Please see the Special Trustee's Assessment and Strategic Plan presentation portion of this statement.

This concludes my statement, I will be happy to respond to any questions the Committee may have.

PREPARED STATEMENT OF ERIC R. DAVENPORT

TESTIMONY
OF
ERIC R. DAVENPORT, CHAIRMAN
INTERTRIBAL MONITORING ASSOCIATION ON INDIAN TRUST
FUNDS

BEFORE THE
HOUSE RESOURCES COMMITTEE
TASK FORCE ON INDIAN TRUST FUND MANAGEMENT

SEPTEMBER 26, 1996
WASHINGTON, D.C.

Mr. Chairman and Members of the Task Force:

Thank you for the opportunity to appear before you today. My name is Eric R. Davenport. I am the Chairman of the Intertribal Monitoring Association on Indian Trust Funds (ITMA). On behalf of the members of ITMA I want to once again thank you for your leadership on this issue and your commitment to seek solutions to the past mismanagement of the trust funds and ensure the proper management of those funds in the future.

The Task Force has asked ITMA to respond to ten specific questions in today's testimony. I will take those questions in the order in which they were asked.

(1) Should the Federal government continue to be in the business of administering IIM accounts?

We believe that the answer is an unequivocal Yes.

We obviously do not base this answer on the past performance of the federal government. Little in the way of positive information about past performance is available. We do know that Arthur Andersen LLP has advised both the Bureau of Indian Affairs and this Congress that these accounts appear to be in such a state of disarray that it would take well in excess of \$200 million to perform the most basic reconstruction and partial reconciliation of the accounts. This assessment is consistent with the